

Human Rights

A Newsletter Reviewing
Human Rights Developments
in Manitoba

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

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Continuous Improvement in Services

The normal procedure for processing a complaint is to draft and serve a formal complaint and then wait for the party accused of violating The Code to reply. This can be time consuming. Sometimes an informal contact might achieve a resolution quickly. A simple phone call to the business, government or service might be all that it takes.

A New Process

Nobody involved in a complaint wants delays naturally, they want the complaint to be resolved as promptly as possible. While there are limits to streamlining (justice should never be rushed), every system has some room for improvement. To better serve the public and meet our goal of stopping discrimination, the Commission recently began a six month demonstration project for a new procedure: the pre-complaint procedure, which when successful avoids the formal complaint process completely.

There are ground rules for determining which complaints are suitable for the pre-complaint process. First, the potential complaint must be within the jurisdiction of The Code. Second, the issues should be relatively simple and straightforward. Third, the resolution sought by the Complainant should be reasonable and achievable.

Six Month Pilot Project

Under the six month pilot project, when quick action might

Message from The Chairperson

Welcome to the first issue of the newsletter of The Manitoba Human Rights Commission. Spanning the 27 years since its inception, our agency has achieved a certain moral authority both provincially and nationally. It has been in the vanguard of advancing anti-discriminatory principles to favourable determinations by adjudication and the Courts. It has ensured that the definition of discrimination has been meaningfully applied and that the agency's public programmes have been well considered and accessible. The Commission's good work has been somewhat impaired until recently by delays which have plagued case dispositions. Delay has been common to all Canadian human rights agencies. In my view this has been attributable largely to a tentativeness by all Commissions:

help resolve a potential complaint, the issue is forwarded to a specially assigned Officer. The Officer phones the party accused of discrimination to see if a fast resolution acceptable to all parties can be achieved.

To date, 37 complaints have been settled early, without becoming complaints our experience is that half the potential new complaints selected for this process end up being resolved with about one hour's worth of phone calls, spread out over two weeks following the initial contact.

Positive Results Achieved

A sight-impaired woman's guide dog is denied entry to a church. A phone call to the church leads to a letter of apology and a commitment to ensure guide dogs are allowed in.

An immigrant was subjected to derogatory remarks. The service apologized, penalized the worker involved, and provided a gift certificate to the Complainant.

A person with chronic depression lost a position because he could not concentrate. After several phone calls, he was rehired into a position he was qualified for.

Work on these cases averaged less than an hour per file, saving time and providing faster service.

the mandate, delegated in the 1970's, took time to clarify and evolve. However, a streamlining of procedures over the past five years and very recent initiatives to expedite pre- and post-complaint resolutions have eliminated the backlog of cases. These developments and a new focus on systemic discrimination were the catalysts for this newsletter. We will keep you posted quarterly.

Sincerely,
Ken Filkow, Q.C.

Settlements: Resolving Complaints

Complaints are frequently settled when, following an investigation, the evidence is reviewed with the parties. This is called an early resolution, and is done on a without prejudice basis. Human rights law is designed to correct for the future, not punish for the past. Settlements restore to the Complainant what she or he lost because of the discrimination. Following are some recent settlements.

Perceived Disability

The Complainant, hired on a full time basis, underwent a routine medical examination during his probationary period. The medical report disclosed a degenerative disc in his back, but noted that this would not affect his ability to do his job. However, the employer terminated him immediately.

(The Complainant was still in the probationary period. His performance appraisals were positive.) The employer said that because of the Complainant's pre-existing medical condition there was an increased risk of re-injury.

The employer took no steps to accommodate him and argued it would be an undue hardship to do so.

The investigation revealed that the employer had made no effort to assess his abilities. Medical evidence showed that there was no increased risk of re-injury.

The employer's decision to fire him was based not on an actual disability, but on the perception he had a disability. The Code protects individuals whether they are members of a protected group (ie, people with disabilities), or are simply thought to be (perceived) members of the group.

The complaint was resolved by the Respondent giving \$5,000 in damages to the Complainant.

Sexual Harassment

The Complainant was a waitress in a restaurant for approximately two months. She resigned after being the target of unwelcome sexual advances and solicitations by the manager.

Examples of his harassment included physical touching and comments about her appearance and personal life.

The Complainant said she made it clear to the manager she did not want the behaviour to continue, and had reported it. He suggested she tolerate the situation and do nothing. He took no steps to stop the harassment.

Initially, the restaurant owner denied the harassment had occurred. On hearing the results of the investigation, the owner offered \$1,000 as compensation for the Complainant's humiliation and distress. She accepted this offer.

Children's Softball

A complaint alleged that two girls who played all season on a Mite (9 and 10 year old) boy's softball team were denied the opportunity to compete with their team in a provincial boys' championship.

The governing Association's position was that the rules prohibited coed competitions.

Commission staff met with Association representatives, who were unable to suggest any bona fide requirement, such as physical strength, which would support their position.

The Association subsequently decided to amend the rules to allow Mite age girls to play on the boys' team, and the complaint was settled on this basis.

Physical Access Case Decided

Racism and Prejudice by Danny Audy

Eyes are watching
Some snickers with some

In an important test case, an adjudicator found that the Royal Crown Restaurant discriminated against persons with disabilities when accessing the restaurant by requiring them to use a wheelchair lift instead of a ramp.

laughs
Older people walk the other
way
Another looks and coughs

A man runs across the street
Some kids joke around
Other teens stand in a group
I walk by without a sound

Skin may be different
Eye colours not the same
Others may be taller
But hey, who is there to
blame

I sit with a mirror
And there I see myself
I know I am another culture
Sitting along the shelf

Prejudice and racism
These words I hate to say
I live with all these other
people
And go on day-by-day!!

This poem, written by
Danny Audy, was a winner
in a poetry contest about
racism conducted by The
Swan Valley Regional
Secondary School. Mr.
Audy is a Grade 10 student
from Bowsman Manitoba,
and is of Cree descent.

The complaint came from Mr. T. Beeman, who alleged that the lift was difficult to use and drew the attention of other diners to a user of the lift in a humiliating manner (for example, a bell had to be rung to call a staff person to operate the lift). The Commission determined that the complaint was justified. When negotiations did not resolve the issue, the Commission referred the complaint to adjudication. Mr. W. W. Riedel was appointed Adjudicator by the Minister of Justice.

In his decision, Adjudicator Riedel agreed with the position advanced by the Manitoba Human Rights Commission and intervenor groups that use of a platform lift was discrimination against persons with disabilities.

In my view, the ability to do things for oneself without assistance or with the least restriction possible is a critical aspect of self-worth and dignity for a mobility disabled person. Riedel added that in most cases platform lifts do not adequately meet the dignity requirements of the mobility impaired because of their unnecessary interference with uninterrupted and in some cases unassisted mobility.

Mr. Riedel ultimately concluded, however, that the construction of a ramp would cause an undue hardship. He noted that the major structural modifications which would be necessary would be so extensive and disruptive to the owner and other parties that he did not order the renovations be required.

Several important human rights principles were established in the decision. The Adjudicator concluded that where level access is not possible, the law requires that access be provided by way of a properly constructed wheelchair ramp. Platform ramps are acceptable only in very limited circumstances. As well, although The Manitoba Building Code allows greater latitude in using lifts, The Human Rights Code requirements have supremacy. Compliance with the Building Code alone will not be sufficient to meet obligations with respect to access. Ken Filkow, Manitoba Human Rights Commission Chairperson, said the decision was highly significant. The effect of the decision is that businesses must provide access to patrons in a dignified manner, he noted. Where level access is not possible, ramps or elevators are to be used, and wheelchair lifts only where other means of access are highly impracticable.

This shows that universal access must be included early in construction and renovation plans.

The Manitoba League of Persons with Disabilities, The Canadian Paraplegic Association and People in Equal Participation Inc.

were granted intervenor status in the cases.

A few years ago the Commission printed and distributed a series of Access Bulletins. In light of this decision the Bulletins will be updated and the Commission will work in partnership with a number of community groups to ensure that appropriate information is circulated to architects, designers, all applicants for building permits in Manitoba, and other appropriate organizations.

Human Rights Journalism Awards

A yearly award honouring excellence in journalism on human rights issues is sponsored by the Commission, the Winnipeg Press Club and the Community Legal Education Association. Anyone can make a submission(s), whether the article(s) are in print, audio or video. The rules are that the article should have been prepared by a Manitoba journalist, and been printed or aired in Manitoba between October 7, 1996 and October 6, 1997. To qualify, the entry should address a human rights issue. Entries are judged based on a combination of excellence in reporting and relevance to human rights issues. Decisions are made by a panel of jurors.

For more information, please contact Human Rights Officer Rich Ludwick, at the Manitoba Human Rights Commission (204-945-3007).

Videos and Publications Available To Borrow At No Charge!

All videos in the Commission's library are available to borrow free of charge. Publications are also available at no charge. We have many thought-provoking, discussion-starting videos on human rights subjects. Some of the videos most in demand address sexual harassment and related issues. Check them out, then check them out!

Discrimination in the Workplace

Canada Law Book. Presents real examples of discrimination in the workplace, including age, race, religion, disability, sexual orientation and sexual harassment.

Trade Secrets: Blue Collar Women

Sexual Harassment & Self Esteem: Face Up To Harassment.

Dr. Rozanne Perlmutter. Specifically created for high school students. A group of Grade 11 and 12 students explore sexual harassment in their school. A very effective discussion starter in high schools.

Speak Out

Stephanie Antolacy/G. Gerzon. An excellent video for women in pre-technology and pre-trades programs, for high school career days and business audiences. Four women reveal how their lives changed when they entered traditionally male trades.

Call Me Sister, Call Me Brother

Canadian Auto Workers/Barna-Alpha Productions. A perceptive look at racial and sexual harassment in factories, examining the impact of harassment, and reviewing policies and procedures to fight this problem. As examples of discriminatory conduct and remarks are presented frankly, viewer discretion is advised.

Taking Action, Petro Canada's Program on Sexual Harassment.

Narrated by Peter Gzowski, this video explores sexual harassment in employment, and shows women in traditional and non-traditional work.

For closed captioned viewing, a decoder is required, which you must provide. Borrowers are responsible for returning the video in good condition by the due date. A complete list of our videos in English and French is available. We also have publications (fact sheets, pamphlets and booklets) which address sexual harassment and related issues. These publications are also available free of charge. Please contact the Commission for more information.

What we can do for you

The Manitoba Human Rights Commission provides many free services on a confidential basis. All you have to do is contact us. Services to assist you include:

- Help with writing and establishing company policies on human rights issues
- Confidentially providing the information you need, no matter what side of a complaint you may be on
- Advisory Opinions, which can protect employers and services against future complaints
- Free Loan Service for videos on a wide variety of human rights related subjects (please see last page).

This newsletter is published four times each year. Its purpose is to provide information about human rights law, procedures and policies. We welcome your comments. Please write to Editor, Newsletter, at the Manitoba Human Rights Commission's Winnipeg address. Additional copies of this newsletter are available on request.

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